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54

EXCISE

11 DEC 1980

MEMORANDUM

TO: S/S - Mr. Peter Tarnoff

FROM: A - Thomas M. Tracy

SUBJECT: Transition Papers

The attached list is provided pursuant to your request of December 5 for a compilation of Presidential Directives, NSDMs, and legislative provisions which significantly affect or constrain Bureau of Administration activities.

The Offices of Communications, Security, Classification/Declassification, Operations, Foreign Buildings Operations, and the Safety Program have included applicable provisions. The Information Systems Office and the Allowances Staff had no contributions to make based upon the request.

In one instance, clearance was deemed necessary on a communications issue. The issue and clearance may be found on page 2.

If you require further clarification, please contact Jeff White, Ext. 28415.

Attachments:
As stated.

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When detached from attachments Unclassified

DEPARTMENT OF STATE/AID/MR
REVIEWED BY [signature] DATE 6/9/83
RDS ☐ or XDS ☐ EXT. DATE
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RELEASE DENIED ☒ in Part
PA or FOI EXEMPTIONS B1, A2

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OFFICE OF COMMUNICATIONS

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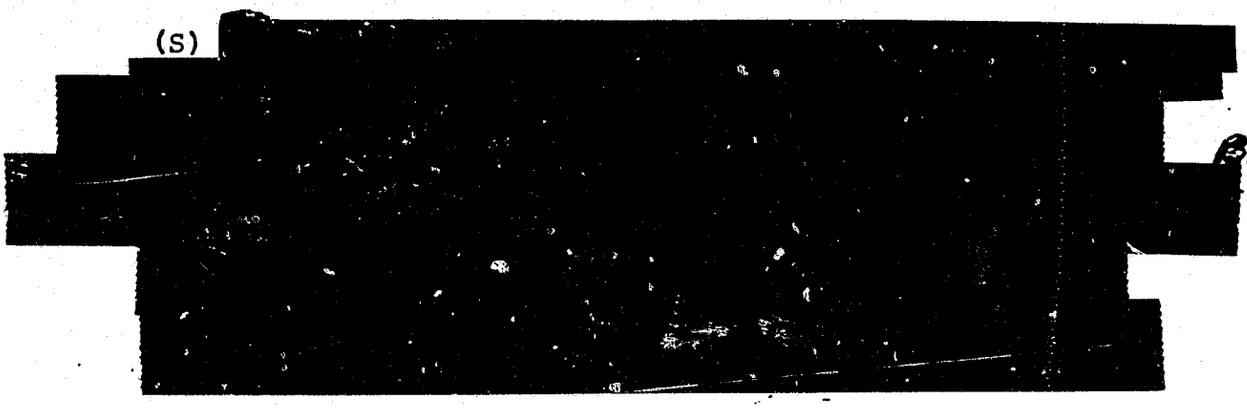

B1, A2

Clearance: INR/DDC/RPS - Mr. Richard Curl (telephonically)

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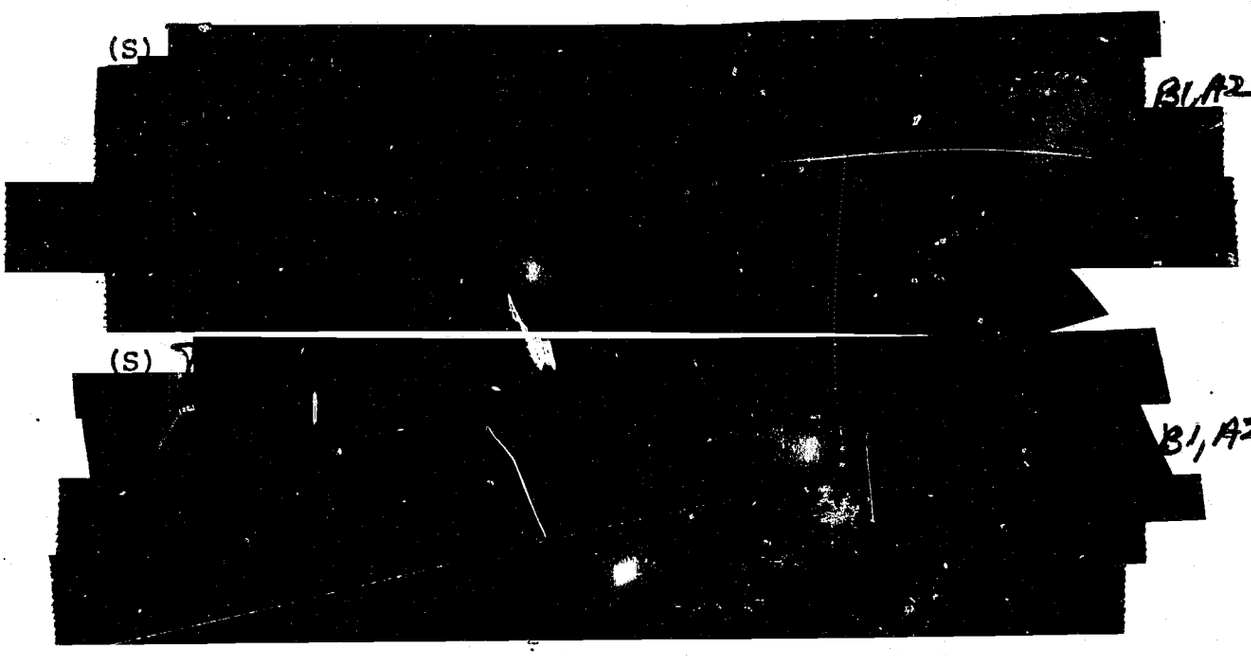

(S) B1, A2

(S) B1, A2

(U) Legislative Action: It is anticipated that a rewrite of the Communications Act of 1934, as amended, will once again be submitted for legislation. In addition to the Act's current provisions, OC is recommending that diplomatic missions in the Washington, D.C. area be allowed to install and operate fixed, mobile, and transportable voice radio systems. If this provision is incorporated it will assist U.S. diplomatic missions to obtain reciprocal rights in overseas locations, to include those where protective security measures must be enhanced.

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OFFICE OF SECURITY

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-5-

1. Executive Order 10450 on Security Requirements for Government Employment: Executive Order 10450 issued April 27, 1953, requires that investigations be conducted on all individuals entering the Federal Service. The Order requires preappointment full field investigations on applicants for critical-sensitive positions. Inquiries conducted pursuant to Executive Order 10450 are limited to matters relevant to a determination of fitness for the position, including a determination of whether the appointment is clearly consistent with the national security. Full field investigations are designed to develop sufficient information to enable officials to determine both the security and suitability fitness of the individual for employment. In select cases the full field investigation may be tailored to obtain in depth information concerning special attributes and qualifications required for proper performance in the position involved.

NLJ/JSC 97-139

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2. Protection of Foreign Officials, Official Guests and Internationally Protected Persons - 18 USC 112, Authority to Carry Firearms - 22 USC 2666, Arrest Power of Security Officers - 22 USC 2667: Provides authority for Special Agents and Security Officers of the U. S. Department of State to carry firearms for the purpose of "protecting heads of foreign states, official representatives of foreign governments, and other distinguished visitors to the United States, the Secretary of State, the Deputy Secretary of State, official representatives of the United States Government and members of the immediate families of any such persons, both in the United States and abroad."

One hundred fifty Special Agents assigned to nine domestic field offices provide the core of the manpower support for protective security operations, in addition to 35 agents who provide security for the Secretary of State. Field office personnel have the primary responsibility for conducting background investigations for State Department employees, and are utilized for protective security details on an as needed basis.

NLJ/JSC 10-30

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CLASSIFICATION/DECLASSIFICATION CENTER

(A/CDC)

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-8-

1. Executive Order 12065 on National Security Information (Classification/ Declassification) dated June 28, 1978: Spells out criteria and procedures for classification/declassification of national security material government-wide. Limits number of agencies and officials authorized to classify, prescribes duration of classification (maximum normally 20 years). Requires that any document created by an agency be declassified on request if agency cannot demonstrate "identifiable damage" from release. Requires that all documents still classified after 20 years be reviewed or bulk declassified.

   Although an improvement over its predecessor Order in that it makes special provision for foreign government information, it has still had some inhibiting effect on foreign governments several of which have requested specific reassurance that their information will be fully protected: also, although not quantifiable, some effect on foreign service reporting when officers fear that confidentiality of sources such as American businessmen overseas may not be protectable. Review of documents for declassification is expensive undertaking (see comments under 2).

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2. Freedom of Information Act 5 USC 552 (effective February 13, 1975) amendment: Provides for access by any person worldwide to any records of executive branch. Such access must be granted unless agency can demonstrate that information falls within one of nine specific categories. Sets deadline of 10 working days to comply with request, and provides for final review by courts on denied material, with potential for overriding agency.

Ten day limit has proved impossible to meet and has led to time-consuming court cases. Foreign governments have expressed concern at provision for judicial review and possible release of their information. Some confidential sources are less willing to supply information lest their names be disclosed. Some reporting officers are refraining from written comment which may be subject to release under the FOIA. There is a constant risk of error leading to release of sensitive material. Implementation of the FOIA is expensive for the Department, involving extensive search of records, highly-paid review, and legal expenses. Present budget for administering EO 12065 and FOIA is $1,600,000 in A/CDC alone. (Both EO and FOIA benefit very small proportion of public - notably lawyers using FOIA as easier substitute for discovery process, and a limited group of scholars.)

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OFFICE OF OPERATIONS

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Fly America Act of 1974, as amended: This Act, specifically Section 1117, requires that all Government-financed air travel be performed on American carriers wherever scheduled American service is available. The Department spends a great amount of time and human resources counseling travelers and overseas posts on which air routings they must use to ensure compliance with the Act. An individual traveler who does not comply will be assessed a "foreign-flag penalty". The Act places constraints and reduces flexibility in scheduling employee travel, increases direct travel costs, and increases costs associated with delays and overnights incurred in compliance with the Act.

GSA Temporary Regulation A-15: "City-Pair Contract Air Fares": This new GSA contract requires most USG employees to use contract-reduced air fares on specific carriers between Washington and eleven other "City-Pairs". While the fares represent a dramatic savings over the regular coach class fares, the flights usually depart from Baltimore International Airport (BWI) and arrive at destination airports not generally used by larger carriers, such as Midway for Chicago and Oakland for San Francisco. This constrains our travelers to spend more time using surface transportation to get to airports for departure and from airport to destinations. Current plan to raise the present 11 "City-Pairs" to 102 on January 1, 1981 will place additional constraints and inhibit our flexibility in scheduling travelers.

OMB Circular A-120 and OMB Memorandum dated July 10, 1980 entitled "Management Control of Consulting Service Contracts and Improvement of Agency Procurement Practices": These documents establish policy and guidelines on the appropriate use of consulting services obtained from individuals and organizations. They establish constraints on the effective use of consulting services and require contracting officers to:

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(1) verify proper clearance for use of consulting services;

(2) assure that contracts are competitively awarded;

(3) make appropriate disclosure to avoid conflict of interest;

(4) assure that contracts are properly administered;

(5) assure work evaluations are performed;

(6) comply with all other applicable provisions of Circular A-120; and

(7) report all awards over $10,000 through the Federal Procurement Data System.

OMB Circular A-76: This Circular attempts to place maximum reliance on the private sector for goods and services that are not inherently governmental in nature. It constrains our operations in that an inventory of all services valued in excess of $100,000 must be prepared annually; sufficiently precise work statements must be prepared; bids or offers obtained from contractors, in-house cost estimate be prepared; and cost comparisons made following the Cost Comparison Handbook provided by OMB. This requies considerable resources from various organizations such as the personnel office, management analysis group, the budget office, the procurement office, the legal office, and other staff functions to perform the analysis. Where such analysis indicates a contract would be less costly, the contract must be awarded and the in-house operation disbanded without regard for quality of service, cost of annual recompetition, turnover and transition costs, etc.

Socio-Economic Directives: OFPP Policy Letters 79-1, 79-3, 80-1, 80-2, 80-4, and 80-6 mandate that:

(1) small and disadvantaged businesses be awarded all procuements under $10,000, unless justification for exception exists;

(2) wherever possible all other procurements and/or subcontracts be set aside for small and disadvantaged business.

SUPPORTED BY THE ANALYSIS DESCRIBED ABOVE.
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(3) extensive goal-setting and reporting be undertaken by procurement officials.

These directives mean that all procurement actions must be delayed until SBA has reviewed and approved them. In addition, the directives require that procurement officers spend considerable resources complying with the goal-setting and reporting requirements.

31 USC 638c. Maximum Purchase Price of Motor Vehicles: The current statute which establishes a maximum of $3,400 for sedans and $3,800 for station wagons, constrains our ability to acquire passenger motor vehicles needed to meet essential transportation at Foreign Service posts because this limit is below the manufacturer's minimum price. Legislation is pending to increase these amounts to $6,000 and $6,400 respectively and favorable action is essential. Similar relief is needed for our Chief of Mission sedans included in the Department's Annual Appropriations Act which currently has a maximum of $6,500. An increase to $9,500 is being proposed for FY-82. Again, favorable enactment will be essential.

Proposed Amendment FY-81 Appropriations Bill: A proposed amendment to the Department's appropriations bill which would require all contracts over $10,000 or modifications increasing existing contracts by more that 10 percent in the last two months of FY-81 to be issued in the market place at least 60 calendar days before the date of the contract or modification. This amendment would hamper our work in that it would further curtail an already constrained and inadequate time schedule to conduct a proper, competitive procurement.

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-14-

OFFICE OF FOREIGN BUILDINGS OPERATIONS

(A/FBO)

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OFFICE OF FOREIGN BUILDINGS OPERATIONS (A/FBO)

1. Foreign Service Building Act of 1926 (22 USC 292): This statute authorizes the Secretary of State to acquire, by purchase or construction buildings and grounds in foreign countries for use as diplomatic and consular establishments of the U. S. The Act gives FBO authority to negotiate contracts for all work of construction, alteration, and repair under this Act, and the work to be performed, where necessary without regard to such statutory provisions as relate to the negotiation makings, and performance of contracts and performance of work in the U. S.

2. Use and control of consulting service contracts, FAM Circular No. 34 9/15/80: This regulation limits the use of services purely advisory in nature relating to the Governmental functions of agency administration and management and agency program management. To the extent that FBO contracts are for purely advisory services, these contracts are subject to the Department regulations, to the extent that they are intended to apply to FBO.

3. Selection of Architects and Engineers 40USC541: This statute is the authority to announce the requirements of agencies for A&E contracts. This does not constrain our work, because we are authorized without regard to civil service and classification laws, to obtain architectural and other expert services as may be necessary by the Foreign Buildings Act of 1926. (22USC202).

4. National Energy Conservation Policy Act: This statute directs that all public buildings submit energy conservation plans for approval. This constrains our work since it requires us to submit conservation plans on a worldwide basis, even though in areas where we function energy conservation is not subject to Governmental decrees.

5. Public Contracts (41USC282): This statute requires that all Government contracts be advertised, unless one of the 10 listed exemptions applies. This does not constrain our work since under varying circumstances certain of the exemptions can be applied to our projects

6. Advance Payments (31USC529): Authority to make advance payments. This statute does not constrain our work since statute provides that under reasonable circumstances the advance payments may be made.

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-16-

DEPARTMENT OF STATE SAFETY PROGRAM

Executive Order 12196 on Safety and Health Requirements for Federal Agencies: The Occupational Safety and Health program is governed by the Occupational Safety and Health Act of 1970 Part 1960 as amended in 29 USC 668, and Executive Order 12196 of February 26, 1980. This new Executive Order, effective as of July 1, 1980 restates the mandates for Heads of Federal Agencies to insure a safe and healthful workplace for all federal employees. It also emphasizes employee involvement through the establishment of Occupational Safe and Health Committees. The new program elements for this Executive Order were published on October 21, 1980.

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